



1 (June 1, 2010)

2 **P R O C E E D I N G S**

3 (Open court:)

4 THE COURT: Mr. Baxter, where are you.

5 MR. BAXTER: I apologize, Your Honor. When I  
6 spoke to your law clerk on Friday, we had discussed  
7 setting a phone conference. I misunderstood; I apologize.

8 THE COURT: Well, I'm just going to tell you  
9 that there are judges still sitting in this court that  
10 would deny your motion outright because you didn't show up  
11 for it.

12 MR. BAXTER: I understand.

13 THE COURT: So in the future, in the face of any  
14 possible ambiguity, make sure to clarify what the order  
15 requires. Ms. Broussard, can you hear me?

16 MS. BROUSSARD: Yes, I can hear you, Your Honor.

17 THE COURT: The first question I have for you is  
18 whether there is any objection on the defendant's part to  
19 the relevancy of the information Mr. Baxter seeks on  
20 behalf of his client?

21 MS. BROUSSARD: Yes. There are some objections  
22 on the basis of relevance, Your Honor.

23 THE COURT: All right. Well, the reason I asked  
24 the question is because if there weren't, then it really  
25 comes down to a question of logistics and equities, but I

1 suppose I didn't see anything filed by you on behalf of  
2 the defendant -- that isn't necessarily required,  
3 particularly on a quick setting like this. But it seems  
4 to me that if the information Mr. Baxter seeks on behalf  
5 of the plaintiff is information that the defendant's  
6 30(b)(6) designee could not provide at deposition, but  
7 should have been able to provide at deposition, I have  
8 difficulty understanding how the information Mr. Baxter  
9 wants is not relevant. So perhaps you should explain  
10 that.

11 MS. BROUSSARD: Well, I guess some of the -- not  
12 all of the information he seeks is not relevant. But the  
13 information that is relevant, the 30(b)(6) witness would  
14 be able to provide that at the deposition.

15 THE COURT: Let me make sure I understand.  
16 First, there has already been at least a partial  
17 deposition of the 30(b)(6) representative; is that  
18 correct?

19 MS. BROUSSARD: That's correct.

20 THE COURT: Is it also correct that the  
21 information contained in the interrogatories that are at  
22 issue here is information -- I'm sorry -- information that  
23 the 30(b)(6) representative could not provide at the first  
24 deposition?

25 MS. BROUSSARD: Well, further investigation

1 would need to be conducted. So some of it was not  
2 information that she could just recite off the top of her  
3 head. There are some codes that needed to be decoded and  
4 that would required further investigation.

5 THE COURT: Well, when a 30(b)(6) deposition  
6 notice is drafted and presented -- and I haven't seen it  
7 so I can't say -- but the rules require that the topic or  
8 topics on which examination shall be conducted be  
9 specifically identified and described were these codes  
10 within the description in the 30(b)(6) notice.

11 MS. BROUSSARD: I would have to look at the  
12 original notice, Your Honor, to determine that.

13 THE COURT: Well, I'm just going to cut to the  
14 chase. I have a concern here. My concern is the 30(b)(6)  
15 deposition designee either was not properly prepared for  
16 the deposition or was not the person who should have been  
17 designated. And if she is knowledgeable on some of the  
18 topics, then it was incumbent upon the defendant to  
19 designate additional individuals who could speak  
20 collectively to all of the topics in the 30(b)(6) notice.  
21 And that's my concern; that that wasn't done. What can  
22 you tell me about that?

23 MS. BROUSSARD: From what I recall -- I mean,  
24 the witness was the proper person, in accordance to the  
25 topics that were identified in the notice, and she was

1 prepared. But it looks like these interrogatories related  
2 to information that -- I guess additional information that  
3 came out during this first deposition that she would be  
4 able to speak to in a second deposition.

5 THE COURT: I am sorry. I'm not sure I followed  
6 that. Do you mean that the interrogatories that were  
7 later proceed pounded were on matters raised in the first  
8 deposition but weren't covered in the notice?

9 MS. BROUSSARD: Again, I apologize, Your Honor.  
10 I would have to retrieve that first deposition notice to  
11 compare it to these interrogatories to see if that is  
12 indeed the case.

13 THE COURT: When did that deposition occur?

14 Mr. Baxter, when did the Willis deposition  
15 occur?

16 MR. BAXTER: Your Honor, I'm pulling it up right  
17 now.

18 MS. BROUSSARD: I believe it was early February,  
19 Your Honor.

20 MR. BAXTER: I have got the transcript in front  
21 of me.

22 THE COURT: And what was the date, Mr. Baxter?

23 MS. BROUSSARD: I think it was February 4th.

24 MR. BAXTER: February 4th, 2010.

25 THE COURT: All right. Mr. Baxter, I have a

1 question for you: As far as I can tell, these  
2 interrogatories, which seem to be the subject of your  
3 motion to compel, were served on April 22nd.

4 MR. BAXTER: Correct, Your Honor.

5 THE COURT: Why did you wait two and a half  
6 months after the Willis deposition to serve these  
7 interrogatories, particularly when there could be no doubt  
8 by my prior ruling that the date for the close of  
9 discovery would not be extended again?

10 MR. BAXTER: Your Honor, we set the new Willis  
11 deposition shortly after Your Honor granted the last  
12 extension.

13 THE COURT: That's not my question. My question  
14 is, if you knew in early February that Willis was unable  
15 to provide certain information relevant to your client's  
16 case, why did you wait two and a half months to send these  
17 interrogatories?

18 MR. BAXTER: I guess my concern was, when I knew  
19 there was going to be a second Willis deposition, I wanted  
20 to make sure she did the research. At the time of the  
21 first deposition, she testified that she could look up the  
22 codes and tell me who the subscribers were that correlated  
23 to each code. So my plan was to ask her at the second  
24 deposition to do that, to tell me who the corresponding  
25 subscribers were. But after we set up the continuation

1 deposition, I thought the prudent thing to do would be to  
2 issue interrogatories to ensure that she would do the  
3 research before the deposition took place.

4 THE COURT: She was deposed in early February?

5 MR. BAXTER: Correct, Your Honor.

6 THE COURT: And there has only been the one  
7 deposition so far?

8 MR. BAXTER: Correct.

9 THE COURT: I am just going to make an  
10 observation. I am not convinced that the reason for  
11 waiting to serve these interrogatories is a sufficient  
12 reason to put us all here today talking about a motion to  
13 compel on an expedited basis because the close of  
14 discovery is nearly upon us. I mean, a motion to compel  
15 may have been necessary anyway, Mr. Baxter, but it seems  
16 to me that the primary reason for it is the defendant's --  
17 from your standpoint -- failure to give you information in  
18 time for his deposition, which I understand is scheduled  
19 for Thursday. And today is Tuesday.

20 Ms. Broussard, talk to me about your concerns of  
21 relevancy.

22 MS. BROUSSARD: Well, for instance,  
23 interrogatory No. 3 asks for a certification, if any, that  
24 Equifax obtained from Target National Bank, which is a  
25 third party in this case regarding the completeness and

1 accuracy of information it reported to plaintiff. It is  
2 Equifax's position that that's not relevant because, based  
3 on the information -- based on Ms. Willis' testimony in  
4 the deposition, it doesn't appear that that's an issue,  
5 because plaintiff's claim was a re-insertion claim; that  
6 Target reinserted information. I believe that, based on  
7 Ms. Willis' deposition, there is no evidence that Target  
8 reinserted this account information; therefore, that  
9 requested certification would not have been necessary.

10 THE COURT: Well, a starting point, because we  
11 are in the discovery phase, is not relevancy but whether  
12 the information bears on a claim or defense in the case.  
13 So strict relevancy isn't absolutely required, and it  
14 doesn't necessarily have to be admissible.

15 I suppose that if Mr. Baxter's concern is  
16 whether there was some -- allegedly -- re-insertion of  
17 this information by Target National Bank and Ms. Willis  
18 has testified that there wasn't -- Ms. Willis is not  
19 employed by Target National Bank, am I correct?

20 MS. BROUSSARD: That's correct, Your Honor.

21 THE COURT: It seems to me that the worst that  
22 happens is the defendant responds no such documents exist,  
23 and then Mr. Baxter has his answer. I'm not sure at this  
24 stage Ms. Willis can foreclose further inquiry by talking  
25 about a matter pertaining to another bank with which he is



1 not employed. I'm not sure that does it.

2 Do you have any other concerns about relevancy,  
3 or I should say discoverability about the information  
4 called for in these interrogatories?

5 MS. BROUSSARD: Also, in interrogatory No. 5,  
6 Your Honor, plaintiff is asking Equifax to identify every  
7 person, business or entity that received a credit file  
8 attributed to plaintiff in 2005. What happened here,  
9 Your Honor, was it appears that Equifax's system created  
10 some fragmented files of plaintiff's main file, and these  
11 fragmented files, which aren't a complete credit file,  
12 there were some promotional inquiries on the file.

13 A promotional inquiry is when a third party  
14 obtains a consumer's name because that consumer meets  
15 certain requirements, whether it is a credit score or  
16 whatever reason. Those promotional inquiries appear on  
17 those frag. files and Equifax would object that in many  
18 instances these fragmented files -- a complete fragmented  
19 file did not go out to these parties that made the  
20 promotional inquiries; therefore, Equifax would object  
21 that the credit file isn't the correct terminology for all  
22 of the inquiries that were made into plaintiff's credit  
23 files, and we just wanted to clarify that.

24 THE COURT: Mr. Baxter, what are you after by  
25 the question in interrogatory No. 5?

1 MR. BAXTER: Fundamentally just the businesses  
2 that received credit reports attributed to plaintiff. We  
3 know that a credit report -- or some credit data with the  
4 false Target account went to subscribers throughout 2005  
5 and 2006.

6 THE COURT: It seems to me -- that makes sense  
7 to me. It also makes sense to me that the defendant would  
8 not have distributed a fragment file to a third party  
9 because, by definition, it is not a complete file.

10 Ms. Broussard, is that an accurate statement?

11 MS. BROUSSARD: Yes. And then also credit  
12 report has a different definition, different connotation.  
13 A credit report implies that a complete file of a  
14 consumer. So it is Equifax's position that these  
15 fragmented files were not actually credit reports.

16 THE COURT: Okay. Now, wait a minute. Here is  
17 what I want to know: In fact, here is what I will say:  
18 If any of these fragmented files were distributed to third  
19 parties, whether or not semantically they may fall within  
20 the definition of a credit report, if they were  
21 distributed, then for purposes of discovery the defendant  
22 has to produce them.

23 So my question to you is, were any fragment  
24 files produced outside of the confines of your client's  
25 operation? Did they go to third parties?

1 MS. BROUSSARD: Not the complete frag file. But  
2 there is a distinction between a promotional inquiry, a  
3 hard inquiry and an account review inquiry.

4 A promotional inquiry doesn't transmit an entire  
5 file. It may only transmit the plaintiff's ID  
6 information, the name and the address, but it doesn't show  
7 the actual account information reporting on that frag.  
8 file at the time. Equifax is willing to and I believe it  
9 has already produced this information in response to the  
10 first interrogatories on our full file. Whenever hard  
11 inquiries or account review inquiries are made, Equifax  
12 has identified the subscribers to which the information  
13 has been transmitted. So there is a distinction between  
14 promotional inquiries posing on these fragmented files.

15 THE COURT: What's contained in a promotional  
16 inquiry?

17 MS. BROUSSARD: It depends on the subscriber  
18 that is requesting information, but it could only be a  
19 name or a name and address. Typically when a consumer  
20 gets a pre-approved offer of credit in the mail, that's  
21 due to -- you know -- a lot of times a promotional  
22 inquiry. That subscriber only obtains the name, the  
23 address, possible a credit score. But that subscriber did  
24 not receive a full credit file.

25 THE COURT: Let me ask a question. Let's assume

1 that I am "Mega Merchant, Inc." and I make a promotional  
2 inquiry to your client, because I want to send them my  
3 in-house credit card or I want to send them some  
4 promotional material. If I make that inquiry, what do I  
5 get back from your client?

6 MS. BROUSSARD: It really depends on what  
7 information. It can vary from subscriber to subscriber,  
8 but we do know that they do not get the full file. They  
9 may --

10 THE COURT: So if they don't get the full file,  
11 are there inquiries which result in Equifax providing  
12 information that includes a credit score?

13 MS. BROUSSARD: Yes. That involves audit  
14 trails, which have been produced in this case, but the  
15 audit trails are only triggered by the hard inquiries.  
16 Those have been produced to plaintiff in this case.

17 THE COURT: You have made a distinction between  
18 hard inquiries and promotional inquiries. Am I correct?

19 MS. BROUSSARD: Yes. And also account review  
20 inquiries.

21 THE COURT: Are you saying that there could be  
22 instances in which Equifax sent information in response to  
23 a promotional inquiry which included the plaintiff's  
24 credit score, but that you have no way of tracking if you  
25 did that?

1 MS. BROUSSARD: Yes, that's correct. But --  
2 well, it depends on, again, what information that  
3 subscriber was requesting because the subscribers don't  
4 always -- I guess it is a little hard to explain. If, for  
5 instance, ABC Bank wants credit information regarding  
6 consumers whose credit scores are between 700 and 750,  
7 that information is provided to them so that the credit  
8 score wouldn't be provided. It is just that all of those  
9 consumers that fall within those a parameters, the ID  
10 information would be provided to ABC Bank and promotional  
11 inquiries would post on all of those consumers' credit  
12 files.

13 THE COURT: Here is the bottom line question for  
14 me: With respect to these fragment files, which may have  
15 been produced in response to promotional inquiries as  
16 opposed to hard inquiries, is there a feasible and  
17 practical way to retrieve any of that information to  
18 determine where it was sent?

19 MS. BROUSSARD: Each subscriber has furnished  
20 their information to Equifax. Banks, finance companies,  
21 et cetera are all assigned subscriber codes. Equifax, to  
22 the best of its ability, can decode those subscriber codes  
23 so they can assign the name of the furnisher to the code.

24 THE COURT: Is that a yes to my question?

25 MS. BROUSSARD: That's a yes, Your Honor.

1 THE COURT: All right. If I were to order your  
2 client to do that, how long would it take?

3 MS. BROUSSARD: Well, it appears -- and you may  
4 know, Mr. Baxter. I believe there are several, if not --  
5 I don't know upwards of a hundred.

6 MR. BAXTER: I think that's right.

7 THE COURT: Ms. Broussard, is there any way to  
8 determine -- here is where I think I am going to end up.  
9 If your clients sent any information to third parties that  
10 included the plaintiff's credit score, then I'm going to  
11 require them to tell Mr. Baxter who those third parties  
12 were. If the information didn't include a credit score,  
13 then I am not going to make your client retrieve it.

14 MS. BROUSSARD: All right. My response to your  
15 question might have been a bit confusing, Your Honor. But  
16 to clarify, the score doesn't go out. The furnisher sets  
17 the parameters of the consumers that it wants to target.  
18 Those consumers that fall within those parameters, that's  
19 how that credit information is released or is sent to  
20 those furnishers.

21 So they don't get a score. They may say: You  
22 know, I want all consumers whose scores are under 650 in  
23 order to try to target them for some kind of special  
24 sub-prime financing. Therefore, the ID information on  
25 those consumers will be transmitted to those furnishers.

1 It is not just the score. It is just whether those  
2 consumers meet the specified parameters set by those  
3 furnishers.

4 THE COURT: It seems to me then by setting  
5 parameters at certain levels -- let's say by credit score  
6 level -- and if, as plaintiff alleges here, her credit  
7 score was wrongly set, she would be excluded perhaps from  
8 certain promotional inquiries which could include offers  
9 of credit from any of these furnishers. Am I correct?

10 MS. BROUSSARD: That's correct, Your Honor. I  
11 probably relied a little too heavily on the example about  
12 credit scores. It can be other parameters as well. It  
13 may be a certain age group or a certain geographical part  
14 of the country. It just depends on what parameters that  
15 particular furnisher sets in doing these promotional  
16 inquiries, and that's not something that Equifax can  
17 readily determine just by looking at the scans.

18 THE COURT: I understand that.

19 I am going to go back to the initial question on  
20 this topic, which I think you answered in the affirmative.  
21 It is practical and feasible to retrieve information  
22 showing where fragment files were sent in response to  
23 promotional inquiries; is that correct?

24 MS. BROUSSARD: Well, Your Honor, to respond to  
25 your question, and I don't mean to split hairs, but the

1 actual fragmented file would not have been sent. It would  
2 have just been the identity of that consumer. So it would  
3 have been the name or the address.

4 THE COURT: I think I did understand that but --  
5 yeah, I think I did understand that.

6 MR. BAXTER: Your Honor --

7 THE COURT: I still want to know where they  
8 went. I think what you told me the last time is that your  
9 client could determine that.

10 MS. BROUSSARD: Yes.

11 THE COURT: Mr. Baxter, you want to say  
12 something?

13 MR. BAXTER: Yes, Your Honor. I think the task  
14 is actually simpler than we are discussing. I have a  
15 series of documents, several hundred documents from  
16 Equifax. They have a series of numerical codes. Those  
17 codes correspond with businesses, subscribers. I am just  
18 looking for a list of each subscriber that is listed on  
19 the documents that correspond with each code.

20 THE COURT: All you want is the name -- you have  
21 a number, but you don't know who that is. Is that it?

22 MR. BAXTER: Precisely. And ms. Willis was able  
23 to identify, I think, three subscribers that were written  
24 out longhand on the documents. She said the other ones  
25 that were more heavily coded, she would have to look them



1 up. So that's information that Equifax has.

2 THE COURT: So with respect to interrogatory  
3 No. 5 then, all you are looking for is the code  
4 translation; translate the code into a business entity by  
5 name. Correct?

6 MR. BAXTER: Correct.

7 THE COURT: Well, Ms. Broussard, it seems like  
8 what Mr. Baxter wants is much simpler than what I was  
9 talking to you about. How quickly can your client do  
10 that?

11 MS. BROUSSARD: In five business days.

12 THE COURT: Well, the continuation deposition is  
13 Thursday.

14 MS. BROUSSARD: Right. Your Honor, I apologize.  
15 We have got back to back trials. These witnesses have  
16 been just completely bogged down and had their backs  
17 against the wall in other matters.

18 THE COURT: Well, I am sensitive and sympathetic  
19 to that, but I think, by my count, we are on our sixth  
20 discovery extension. This case has been around for almost  
21 two years. In this district two years is a long time and  
22 discovery isn't even over yet. I mean, discovery usually  
23 finishes in this district in a year or so. We should at  
24 dispositive motions by now and looking at trial dates.

25 I appreciate that things happen in cases that

1 lawyers can't anticipate; that witnesses have unexpected  
2 complications and such. But I will just tell you that the  
3 record reflects at least several requests, in part,  
4 relying on delays caused by scheduling by one or both  
5 parties or their witnesses or representatives,  
6 particularly including what appears to be  
7 on-again/off-again settlement discussions.

8 So here is what I don't want: I don't want this  
9 deposition to convene on Thursday and the information that  
10 Mr. Baxter needs to ask Ms. Willis is yet to be produced.  
11 I don't know, Mr. Baxter. Maybe I'm making too much of  
12 this; maybe you don't need the information that  
13 interrogatory 5 calls for in order to conclude the Willis  
14 deposition. Do you or don't you?

15 MR. BAXTER: If I know that the information is  
16 coming through an interrogatory response without an  
17 objection, then the interrogatory response would be  
18 sufficient. I could complete part of the deposition that  
19 has to be done orally without that response.

20 THE COURT: Is there any of the information  
21 called for in this second set of interrogatories that you  
22 need for the deposition on Thursday?

23 MR. BAXTER: I'm looking back through the  
24 requests, Your Honor. Your Honor, 1 through 5, I could  
25 complete the deposition without having those answers. 6,

1 I think as well, we could complete the deposition. The  
2 only thing I don't want to have happen is what has  
3 happened two times already in this case, which is the  
4 night before a deposition Equifax produces a significant  
5 number of new documents. If I have a representation that  
6 I am not going to get another 200 pages right before the  
7 deposition, then I can pass on 6 as well. I just want to  
8 make sure there aren't any more credit files or fragment  
9 files that I haven't seen.

10 THE COURT: Ms. Broussard, do you know the  
11 answer to that question?

12 MS. BROUSSARD: That's right, Your Honor. There  
13 were a significant number of documents that were produced.  
14 That was one time in February, primarily because the  
15 client needed to search for them and wanted to error on  
16 the side of being over-inclusive.

17 Also, these interrogatories relate to  
18 allegations in plaintiff's second complaint that he has  
19 recently filed involving the same parties and the same  
20 claims, except there is some additional claims added to  
21 that second lawsuit as well. So I was assuming that  
22 plaintiff will conduct discovery in that second lawsuit as  
23 well.

24 THE COURT: Second lawsuit involving the same  
25 parties?

1 MS. BROUSSARD: Yes.

2 THE COURT: Or amended complaint?

3 MS. BROUSSARD: No. It is not an amended  
4 complaint. It is a second lawsuit.

5 THE COURT: Was it filed here?

6 MS. BROUSSARD: Yes, I think it is before  
7 Judge --

8 MR. BAXTER: -- Hubel, Your Honor.

9 MS. BROUSSARD: -- Hubel.

10 THE COURT: Well, that's odd.

11 MR. BAXTER: There were newly discovered claims  
12 that we discovered well into the case, and I asked counsel  
13 if they would stipulate to the inclusion of those claims  
14 in this case, and I just never got a response. So after  
15 waiting and waiting, we didn't want to let new claims pass  
16 based on the discovery data of the Fair Credit Reporting  
17 Act. We filed essentially a placeholder complaint but,  
18 yes, a new lawsuit.

19 THE COURT: So all right. We are digressing  
20 momentarily. But there is a second separate lawsuit  
21 between the same parties filed in this court assigned to a  
22 different judge, correct?

23 MR. BAXTER: Yes, Your Honor.

24 THE COURT: And do the claims in that case arise  
25 out of the same basic facts as the claims which give

1 rise -- as the claims alleged in this case assigned to me?

2 MR. BAXTER: Not really. The complaint reads  
3 similarly because the plaintiff is Ms. Hettman, and the  
4 defendant is Equifax. But the gravamen of those claims  
5 are events and violations of the Act that are not included  
6 in this case because the Fair Credit Reporting Act has a  
7 discovery provision.

8 THE COURT: Yes.

9 MR. BAXTER: So it would be only claims not  
10 before Your Honor.

11 THE COURT: All right. Well, I suppose for what  
12 it is worth, Mr. Baxter, that any discovery in that case  
13 will have to be in that case and not in this case, and I  
14 don't understand that that's what you are trying to do.  
15 But just in the event that's your expectation, just know  
16 that you will have to conduct discovery in that other case  
17 separately.

18 Here is what I am going to say: Ms. Broussard,  
19 it seems to me that Mr. Baxter has indicated that, with  
20 respect to the deposition currently scheduled for this  
21 coming Thursday, he doesn't need the answers to these  
22 interrogatories in order to complete that deposition.

23 Mr. Baxter; is that correct?

24 MR. BAXTER: Correct, Your Honor.

25 THE COURT: And that representation in turn is

1 based, Ms. Broussard, on your representation that there  
2 isn't going to be any new documents produced between now  
3 and Thursday morning.

4 Ms. Broussard, is that correct?

5 MS. BROUSSARD: Well, I am going have my client  
6 check just to make sure that there isn't anything else out  
7 there. But in terms of the volume, I thought that was the  
8 distinction being made. I just want to make sure that  
9 Equifax discloses all the information that it has on  
10 Ms. Hettman. So if a few documents are located, I just  
11 want to make sure that I'm not foreclosed from producing  
12 those to plaintiff.

13 THE COURT: Well, first, you should check with  
14 your client to make sure there isn't anything else by way  
15 of discoverable documents pertaining to Ms. Hettman's  
16 claims that hasn't yet been produced. That's always  
17 prudent, particularly in advance of depositions. But I'm  
18 just going to make an observation, Ms. Broussard, to which  
19 you need not respond because no response is expected or  
20 needed.

21 I have had you in a couple of other cases and  
22 found you to be reasonable and professional. So I am just  
23 going to say that if your client is not sufficiently  
24 attentive to the requirements of complying with the rules  
25 in federal court for the discovery of information, I can

1 remedy that. If that's what is needed here to avoid  
2 midnight or eleventh-hour production of documents, which  
3 should have been produced long ago, I can do that.

4 So convey to your client that the Court will be  
5 watching to see if documents other than a few, if any at  
6 all, managed to be produced Wednesday night in advance of  
7 the Willis deposition. Because if there is another great  
8 volume of documents, I am going to be pretty unhappy.  
9 Because if Mr. Baxter claims he now needs to take a third  
10 installment of the Willis deposition for that reason,  
11 there will likely be consequences.

12 I appreciate Equifax has other cases in other  
13 districts around the country, but compliance with the  
14 rules is required. I was never ever a fan, as a lawyer,  
15 of the production of voluminous documents on the eve of an  
16 important deposition.

17 If that is your client's pattern -- and I'm not  
18 saying anybody is doing anything deliberately here -- it  
19 will have to change, at least in my court. So however you  
20 choose to convey that to your client, I will leave to you,  
21 because I have confidence that you will be able to do so  
22 convincingly.

23 But it seems, at least with respect to the  
24 Willis deposition on Thursday, that there is no immediate  
25 need to respond to these interrogatories. In other words,

1 the deposition can go forward without answers to these six  
2 interrogatories.

3 So the question now is, Ms. Broussard, when do  
4 you believe you can provide answers to these  
5 interrogatories for Mr. Baxter?

6 MS. BROUSSARD: I can provide these on -- Monday  
7 would be the fifth business day.

8 THE COURT: All right. Mr. Baxter, did you hear  
9 that?

10 MR. BAXTER: I did.

11 THE COURT: Any concerns about that?

12 MR. BAXTER: No, that's acceptable to me.

13 THE COURT: All right. It seems to me -- hang  
14 on just a minute. Mr. Baxter, before we click off, and I  
15 don't want to misstate, but I'm looking at your motion  
16 here. I have a recollection that you had mentioned some  
17 suggestion of further deadline extensions being considered  
18 by the parties. Am I correct or am I mistaken?

19 MR. BAXTER: I had not, Your Honor.

20 THE COURT: All right. So right now we're on  
21 track with the current deadlines. Am I correct about  
22 that?

23 MR. BAXTER: Yes.

24 THE COURT: Ms. Broussard, am I correct?

25 MS. BROUSSARD: Yes, Your Honor.



1 THE COURT: Okay. So, Mr. Baxter, Ms. Broussard  
2 says you will have your answers by Monday. To the extent  
3 that I need to grant your motion to compel, it is granted,  
4 and the defendant has until Monday to answer the second  
5 set of interrogatories.

6 There seems no issue with respect to Ms. Willis'  
7 deposition going forward on Thursday with respect to these  
8 interrogatories or with respect to any issue involved  
9 regarding questions you intend to ask her. It seems that  
10 she will be prepared to respond.

11 With respect to your motion, I think that covers  
12 the issues raised by the motion. Is there anything that  
13 you intended to raise by the motion that we haven't  
14 resolved?

15 MR. BAXTER: No, Your Honor.

16 THE COURT: Ms. Broussard, as long as we're on  
17 the phone, is there anything that we need to take up at  
18 this time, whether it concerns the purpose of the motion  
19 or anything else involving discovery?

20 MS. BROUSSARD: I guess the only issue that I  
21 would have is, in the second lawsuit, whether there would  
22 be duplicative discovery would be conducted here,  
23 basically getting two bites at the apple on these issues.

24 THE COURT: Well, I suppose there is some  
25 possibility of that. I will just tell both of you that in

1 this district, and I think there is even at least one  
2 local rule that generally addresses this topic. Related  
3 cases often are consolidated or, if not formally  
4 consolidated, assigned to the same judge.

5 You can always request that, either of you or  
6 both of you jointly. We sometimes do it internally for  
7 purposes of administrative efficiency. Just so you know,  
8 the default is that the judge with the older case is the  
9 judge to whom the cases are assigned, if there is some  
10 kind of consolidation, whether administrative or formally.

11 So to the extent that you have a concern about  
12 duplicative discovery, that would be one way to help  
13 minimize it, by having one judge oversee both cases. Of  
14 course, if that's your preference but not Mr. Baxter's,  
15 then you all would have to file a motion, and probably  
16 Judge Hubel would be the one to hear it, although not  
17 necessarily. But it is his case that is the newer case  
18 and probably the motion would be filed there.

19 MR. BAXTER: Your Honor, we are agreeable to  
20 that. I just pulled up the civil filing sheet for the  
21 second case. We did list this case as the related case,  
22 and we gave the docket case number. It was always our  
23 first intention to see the entire case get resolved at one  
24 time. I just couldn't get a response from Equifax whether  
25 they would stipulate to the inclusion of the newly

1 discovered claims.

2 THE COURT: Ms. Broussard, I'm not going to put  
3 you on spot. All I'll do is tell you to talk to your  
4 client and see what their preference is. If you are not  
5 agreeable, and Mr. Baxter doesn't wish to file a motion  
6 about it, then the cases just stay where they are. But if  
7 you and your client are agreeable, you or Mr. Baxter, or  
8 the two of you jointly, can let Mr. Gale know. Basically  
9 what will happen is Judge Hubel's case will be reassigned  
10 to me. That is the most likely outcome of such a request.

11 So talk to your client, and I am going to ask  
12 you to let Mr. Baxter know on Monday, the same day that  
13 your interrogatory answers are due.

14 MS. BROUSSARD: I will do that, Your Honor.

15 THE COURT: All right. Anything else?

16 All right. Hearing nothing, thank you for being  
17 available, and we're going to sign off on this end.

18 MR. BAXTER: Thank you.

19 MS. BROUSSARD: Thank you, Your Honor.

20 (Recess.)  
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I certify, by signing below, that the foregoing  
is a correct transcript of the record of proceedings in  
the above-entitled cause. A transcript without an  
original signature is not certified.

\_\_\_\_\_  
DENNIS W. APODACA, RMR, FCRR, RPR  
Official Court Reporter

\_\_\_\_\_  
DATE